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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LANCE J. GAY, TIMOTHY A. YOKOTE,
and THOMAS J. GRITZMACHER

Appeal 2008-4178
Application 10/005,768
Technology Center 2400

Decided:¹ February 23, 2009

Before JOSEPH F. RUGGIERO, JOHN A. JEFFERY,
and ELENI MANTIS MERCADER, *Administrative Patent Judges*.

MANTIS MERCADER, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's non-final rejection of claims 1-25. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

INVENTION

Appellants' claimed invention is directed to providing a video on a first screen of a first system, transmitting a command signal from the first system to a second system and performing an operation corresponding to the transmitted command signal at the first and second systems (Spec. ¶ [0003]). The command signal may represent one of stop, play, forward, reverse and pause of the video (Spec. ¶ [0005]). The command signal may also include a pointer coordinate position of a video screen or a frame number of the video [Spec. ¶ [0005]].

Claim 1, reproduced below, is representative of the subject matter on appeal:

1. A method comprising:
 - selecting at least one frame of a video file at a first location;
 - communicating the selecting of said at least one frame of a video file to a second location;
 - viewing said at least one frame of a video file at said first location and said second location;
 - issuing a command at said second location regarding a control operation of said video file;
 - transmitting a command signal from said second location to said first location in response to said issued command;

receiving, at said first location, said command signal;
broadcasting said command signal from said first location to said second location; and
performing, at said first location and said second location, said control operation in response to receipt of said command signal.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Burk	US 4,445,176	Apr. 24, 1984
Kinney	US 5,808,662	Sep. 15, 1998
Beard	US 5,867,156	Feb. 02, 1999
Pacifici	US 6,230,171 B1	May 08, 2001

The following rejections are before us for review:

1. The Examiner rejected claims 1, 2, 4, 7-9, 12-14, 17, 18, 21, 22, and 25 under 35 U.S.C. § 103(a) as being unpatentable over Kinney in view of Beard.

2. The Examiner rejected claims 3, 5, 10, 15, 19, and 23 under 35 U.S.C. § 103(a) as being unpatentable over Kinney in view of Beard and further in view of Burk.

3. The Examiner rejected claims 6, 11, 16, 20, and 24 under 35 U.S.C. § 103(a) as being unpatentable over Kinney in view of Beard and further in view of Pacifici.

Appellants nominally argue claims 4, 7, 9, 12-13, 17, 18, 21, 22, and 25 because the arguments merely reiterate the same arguments presented for claim 1 (App. Br.² 14-21). Accordingly, we group these claims with claim 1 which we select as representative.³ Thus, claims 4, 7, 9, 12, 13, 17, 18, 21, 22, and 25 stand or fall with claim 1. *See* 37 C.F.R. § 41.37 (c)(1)(vii) (2004). Appellants separately argue claims 2, 8, and 14 (App. Br. 14-16 and 18). Furthermore, Appellants argue claims 3, 5, 10, 15, 19, and 23 as a group (App. Br. 21-22). Appellants have presented no further arguments as to the additional reference of *Pacifici* used in rejecting claims 6, 11, 16, 20, and 24, respectively, but instead rely on the arguments provided for claims 1, 8, 13, 18, and 22 from which they depend (App. Br. 23).

We note that Appellants' first argument, on page 11 of the Appeal Brief is directed to the Examiner's objection to claims 5, 10, 15, 19, and 23. This is a petitionable matter and not an appealable matter. *See* Manual of Patent Examining Procedure (MPEP) §§ 1002 and 1201. Accordingly, we will not review that issue.

ISSUES

1. Rejection of claims 1, 4, 7, 9, 12-13, 17, 18, 21, 22, and 25

Appellants contend that Beard does not teach that the same command signal

² Throughout this opinion we are referring to the Appeal Brief filed on April 02, 2007.

³ Only arguments made by Appellants have been considered in this decision. Arguments which Appellants could have made but did not make in the Briefs have not been considered and are deemed waived. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2004).

is sent from a second location to a first location and broadcast from the first location to the second location, but rather, Beard discloses two separate commands issued, namely a REQUEST TO SYNC and a SYNC TO POINT (App. Br. 13). Additionally, Appellants argue that Beard fails to teach or suggest performing at a first location a control operation in response to receipt of the command signal as recited in claim 1, because Beard does not teach that the SYNC TO POINT command is executed on the host (App. Br. 13-14 and Reply Br. 3).

The Examiner responds that although the titles of the commands may be different (i.e., SYNC TO POINT or REQUEST TO SYNC), the command is the same--command to move the cursor (Ans. 20-21). The Examiner further states that Kinney teaches that a command issued by the second location is performed at the first location upon the receipt of the command (Ans. 21-22). Furthermore, the Examiner states that Beard teaches that the host and the guest or second location perform the control operation in response to a command signal (Ans. 20). The Examiner explains that the claimed elements are known and their combination is a predictable result (Ans. 20).

The first issue before us, then, is as follows:

Have Appellants shown that the Examiner erred by determining that Kinney and Beard collectively teach “broadcasting said command signal from said first location to said second location; and performing, at said first location and said second location, said control operation in response to receipt of said command signal” as recited in representative claim 1?

2. Rejection of claims 2, 8, and 14

Appellants argue that the same command signal is broadcast not only from the first location to a second location but also to a third location (i.e., multiple locations), and repeat the argument as presented for claim 1, namely that neither Kinney nor Beard teaches broadcasting the command signal from a first location to a second location (App. Br. 14-16 and 18).

With respect to claim 2, the Examiner refers Appellants to the response relating to claim 1 and further states that Beard teaches broadcasting to a third location or all guests and performing the command at all three locations (Ans. 23). Similarly, with respect to claim 8, the Examiner responds that Beard teaches that the host and second and third systems perform the control operation in response to a command signal (Ans. 25). With respect to claim 14, the Examiner refers Appellants to the response relating to claim 2 (App. Br. 27).

The second issue is as follows:

Have Appellants shown that the Examiner erred by determining that Kinney and Beard collectively teach broadcasting the command signal from the first system or location to the second and third systems or locations and performing the command at all three systems or locations as recited in claims 2, 8, and 14?

3. Rejection of claims 3, 5, 10, 15, 19, and 23

Appellants contend that Burk is silent on the command byte having any relationship whatsoever to the control of a video file (App. Br. 22).

The Examiner responds that Kinney discloses a command signal comprising a control operation including stop, play, forward, reverse, and pause of the video

file or movie (Ans. 30). The Examiner further states that Beard discloses a pointer command (Ans. 30). The Examiner states that Burk discloses sending a command comprising a command byte or 1 byte (Ans. 30) wherein one bit of the one-byte command comprises a specific command (Ans. 30). The Examiner citing *KSR* concludes that the combination of the claimed elements known in the prior art constitute a predictable result (Ans. 30).

Thus, the third issue before us is as follows:

Have Appellants shown that the Examiner erred by determining that Kinney, Beard, and Burk collectively teach a command byte having a relationship to the control of a video file as recited in claims 3, 5, 10, 15, 19, and 23?

FINDINGS OF FACT

The relevant facts include the following:

1. Beard teaches that the response to both commands “SYNC TO POINT” (Fig. 5, element 55) and “SYNC TO HOST” (Fig. 5, element 56) is that all guest viewports are adjusted to display the output near point (Fig. 5, element 57).
2. Kinney teaches issuing a command regarding a control operation at a second location (col. 2, ll. 17-19).
3. Kinney further teaches transmitting the command to a first location in response to the issued command (col. 2, ll. 19-22).
4. Kinney teaches performing at the first location the control operation in response to the receipt of the command (col. 2, ll. 22-25).

5. Kinney further teaches that in the case where the command is a “seek event,” the movie advances to a specified frame (col. 7, ll. 56-59).
6. Kinney does not teach broadcasting the command from the first location to the second location and performing the command at the second location.
7. Beard teaches receiving at a host location a SYNC command from a guest requester (col. 6, ll. 20-33).
8. Beard further teaches that the host broadcasts the command to all guests (col. 6, ll. 33-38).
9. Beard also teaches performing the command at all guest locations in response to the received command (col. 6, ll. 38-42).
10. The Examiner determined that Kinney discloses a command signal comprising a control operation including stop, play, forward, reverse, and pause of the video file or movie (col. 4, ll. 41-45 and ll. 50-55; Ans. 30).
11. The Examiner further determined that Beard discloses a pointer command (Fig. 4C; Ans. 30).
12. The Examiner determined that Burk discloses sending a command comprising a command byte or 1 byte (col. 49, ll. 60-67 and col. 50, ll. 1-5; Ans. 30) wherein one bit of the one-byte command comprises a specific command (col. 49, l. 60-col. 50, l. 5; Ans. 30).

PRINCIPLES OF LAW

The Examiner’s articulated reasoning in the rejection must possess a rational underpinning to support the legal conclusion of obviousness. *In re Kahn*, 441 F.3d

977, 988 (Fed. Cir. 2006). The Supreme Court, citing *Kahn*, 441 F.3d at 988, stated that “rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 127 S. Ct. 1727, 1741 (2007). However, “the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *Id.*

“[O]ne cannot show non-obviousness by attacking references individually where . . . the rejections are based on combinations of references.” *In re Keller*, 642 F.2d 413, 426 (CCPA 1981).

Where the claimed subject matter is a combination that only unites old elements with no change in their respective established functions, and the combination yields predictable results, the claim is unpatentable as obvious under 35 U.S.C. 103(a). *KSR*, 127 S. Ct. at 1739.

ANALYSIS

1. Have Appellants shown that the Examiner erred by determining that Kinney and Beard collectively teach “broadcasting said command signal from said first location to said second location; and performing, at said first location and said second location, said control operation in response to receipt of said command signal” as recited in representative claim 1?

Beard teaches that the response to both commands “SYNC TO POINT” and “SYNC TO HOST” is that all guest viewports are adjusted to display the output

near point (Finding of Fact 1). Thus, regardless of the different titles of the command (i.e., “SYNC TO POINT” or “SYNC TO HOST”) the command necessarily is the same in order to achieve the same outcome.

Kinney teaches issuing a command regarding a control operation at a second location (Finding of Fact 2) and transmitting the command to a first location in response to the issued command (Finding of Fact 3) and *performing at the first location the control operation in response to the receipt of the command* (Finding of Fact 4) (emphasis added). Kinney further teaches that in the case where the command is a “seek event,” the movie advances to a specified frame (Finding of Fact 5). Kinney does not teach broadcasting the command from the first location to the second location and performing the command at the second location (Finding of Fact 6). Beard, however, teaches receiving at a host location (i.e., first location) a SYNC command (i.e., control command) from a guest requester (i.e., second location) (Finding of Fact 7). Beard further teaches that the host (i.e., first location) broadcasts the command to all guests (i.e., including second location) (Finding of Fact 8). Beard also teaches performing the command at all guest locations (i.e., including second location) in response to the received command (Finding of Fact 9). Thus, Beard teaches *broadcasting the command from the first location to the second location and performing the command at the second location* (Findings of Fact 7-9) (emphasis added). Thus, all the limitations of representative claim 1 are taught by the collective teachings of Kinney and Beard. Furthermore, the Examiner’s articulated rationale for modifying Kinney with Beard’s teaching of broadcasting the command signal from the host (i.e., first

location) to the guests (i.e., including second location) to prevent confusion, miscommunication, and work slowdown as taught by Beard (col. 1, ll. 48-67 and Ans. 5) supports the legal conclusion of obviousness. *See KSR*, 127 S. Ct. at 1741.

As stated *supra*, one cannot show non-obviousness by attacking references individually (i.e., Appellants' argument that Beard fails to teach or suggest performing at a first location a control operation in response to receipt of the command signal) where the rejections are based on combinations of references (i.e., Kinney teaches performing at the first location the control operation in response to the receipt of the command (col. 2, ll. 22-25)). *See Keller*, 642 F.2d at 426.

Thus, Appellants have not persuaded us that the Examiner erred in rejecting representative claim 1 or claims 4, 7, 9, 12-13, 17, 18, 21, 22, and 25 which fall with claim 1. Accordingly, we sustain the Examiner's rejection of those claims.

2. Have Appellants shown that the Examiner erred by determining that Kinney and Beard collectively teach broadcasting the command signal from the first system or location to the second and third systems or locations and performing the command at all three systems or locations as recited in claims 2, 8, and 14?

As stated *supra*, Beard teaches that the host (i.e., first location or system) broadcasts the command to all guests (i.e., at multiple locations or systems including second and third locations or systems) (Finding of Fact 8). Beard also teaches performing the command at all guest locations (i.e., at multiple locations or systems including second and third locations or systems) in response to the received command (Finding of Fact 9). Thus, Beard teaches *broadcasting the*

command from the first system or location to the second and third systems or locations and performing the command at all three locations (Findings of Fact 7-9) (emphasis added).

3. Have Appellants shown that the Examiner erred by determining that Kinney, Beard, and Burk collectively teach a command byte having a relationship to the control of a video file as recited in claims 3, 5, 10, 15, 19, and 23?

The Examiner determined that Kinney discloses a command signal comprising a control operation including stop, play, forward, reverse, and pause of the video file or movie (Finding of Fact 10). The Examiner further determined that Beard discloses a pointer command (Finding of Fact 11). The Examiner determined that Burk discloses sending a command comprising a command byte or 1 byte wherein one bit of the one-byte command comprises a specific command (Finding of Fact 12). Citing *KSR*, the Examiner concluded that the combination of the claimed elements known in the prior art constitutes a predictable result (Ans. 30).

We agree with the Examiner's Findings of Fact and conclusion and adopt them as our own.

Furthermore, as stated *supra*, one cannot show non-obviousness by attacking references individually (i.e., Appellants' argument that Burk does not teach a command byte having a relationship to the control of a video file) where the rejections are based on combinations of references (i.e., Kinney and Beard teach that the command signals for the control operations of stop, play, forward, reverse,

and pause as well as the pointer command control the video file and Burk teaches incorporating the specific commands of interest into a byte command). *See Keller*, 642 F.2d at 426.

Thus, Appellants have not persuaded us that the Examiner erred in rejecting claims 3, 5, 10, 15, 19, and 23. Accordingly, we sustain the Examiner's rejection of these claims.

4. Moreover, as stated *supra*, Appellants have presented no further arguments as to the rejected claims 6, 11, 16, 20, and 24, but instead rely on the arguments provided for claims 1, 8, 13, 18, and 22 from which they depend. Thus, for the reasons articulated *supra*, we find that the Appellants have not shown that the Examiner erred in rejecting claims 6, 11, 16, 20, and 24 by virtue of their dependency from claims 1, 8, 13, 18, and 22.

CONCLUSIONS

1. Appellants have not shown that the Examiner erred by determining that Kinney and Beard collectively teach “broadcasting said command signal from said first location to said second location; and performing, at said first location and said second location, said control operation in response to receipt of said command signal” as recited in representative claim 1 or claims 4, 7, 9, 12-13, 17, 18, 21, 22, and 25 which fall with claim 1.

2. Appellants have not shown that the Examiner erred by determining that Kinney and Beard collectively teach broadcasting the command signal from the first system or location to the second and third systems or locations and performing the command at all three systems or locations as recited in claims 2, 8, and 14.

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3. Appellants have not shown that the Examiner erred by determining that Kinney, Beard, and Burk collectively teach a command byte having a relationship to the control of a video file as recited in claims 3, 5, 10, 15, 19, and 23.

4. Appellants have not shown that the Examiner erred in rejecting claims 6, 11, 16, 20, and 24 by virtue of their dependency from claims 1, 8, 13, 18, and 22.

ORDER

The decision of the Examiner to reject claims 1-25 under 35 U.S.C. § 103(a) is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

KIS

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